

from the books, records, and accounts maintained by the Bell operating company of which it is a subsidiary and any other subsidiary or affiliate of such company;
(2) shall have separate officers, directors, and employees from the Bell operating company of which it is subsidiary or any other subsidiary or affiliate of such company;
(3) may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the entity of the Bell operating company of which it is a subsidiary that provides regulated telephone exchange service; and
(4) shall conduct all transactions with the Bell operating company of which it is a subsidiary and other subsidiaries or affiliates of such company on an arm's length basis with any such transactions reduced to writing and available for public inspection.

Section 252(b). Section 252(c) thereafter effectively codifies the nondiscrimination safeguards established by the Commission in the *Third Computer Inquiry*, and prohibits the BOC from discriminating between the separate subsidiary and any other entity in the provision of facilities and services, requires the BOC to make any facilities or services available to the separate subsidiary also available to other entities on nondiscriminatory terms, and requires the BOC to account for all transactions with a separate subsidiary in accordance with generally accepted accounting principles.

The Senate Bill also places restrictions on the ability of BOCs to jointly market telephone exchange and information services. A separate subsidiary offering information services may not market telephone exchange services unless the BOC also allows other ESPs to do so, and a BOC may not market information services offered by its separate subsidiary until the BOC has been authorized to provide interLATA services.

Finally, the legislation codifies and strengthens the Commission's CPNI rules. It prohibits a BOC from sharing aggregate CPNI with its enhanced services subsidiary unless it provides such information on the same terms and conditions to other entities. Section 252(f). It also prohibits the disclosure of CPNI of *all* individual customers -- not simply those with 20 lines or more -- without the customer's prior written consent.

S. 652 therefore supports the Committee's conclusion that the costs of integration outweigh the benefits. The Commission should follow this legislative lead and readopt a separate subsidiary requirement for BOC provision of enhanced services.⁵¹

B. The Commission Should Place Structural Separation Requirements on All BOC-Provided Enhanced Services.

The *Notice* asks whether certain enhanced services should be offered only through a separate subsidiary, while others remain subject to nonstructural safeguards.⁵² The Commission has previously found that the definition of enhanced services is intended to evolve as new services are developed and introduced,⁵³ and the Committee agrees. It would be futile for the Commission to establish different regulatory regimes for different types of

⁵¹ The *Notice* asks that the costs of requiring BOCs to establish separate subsidiaries for the provision of enhanced services be considered when recommending re-establishment of a separate subsidiary requirement. *Notice* at ¶ 40. Apparently Congress does not consider any such costs to outweigh the benefits of this form of regulation.

⁵² *Notice* at ¶ 39.

⁵³ *Phase II Order*, 2 FCC Rcd at 3074.

enhanced services in such a situation because, as the Commission found in the *BOC Safeguards Order*, such a regulatory regime would require a case-by-case determination of which type of enhanced service is involved.⁵⁴

The Committee urges the Commission to impose a structural separation requirement on the provision by BOCs of any enhanced service because it believes that integration of basic and enhanced services generally would not produce operational efficiencies. The Committee recognizes, however, that there may be circumstances in which integrated provision by a BOC of a particular enhanced service with its basic service creates such efficiencies. The Commission should evaluate such claims on a case-by-case basis. If the BOC can show that “true” efficiencies would result, and that they would outweigh the costs of integration discussed above, the Commission could waive the structural separation requirement subject to certain requirements. The Committee does not address the conditions upon which a waiver should be granted, or the conditions that should be placed upon grant of a waiver. It hopes that the BOCs will provide concrete suggestions about such issues in their comments in this proceeding, which the Committee can evaluate in its Reply Comments.

⁵⁴ *BOC Safeguards Order*, 6 FCC Rcd at 7623.

CONCLUSION

For the foregoing reasons, the Committee urges the Commission to readopt regulations that would permit BOC provision of enhanced services only through structurally separate subsidiaries.

Respectfully submitted,

AD HOC TELECOMMUNICATIONS
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200.07\Comments

Certificate of Service

I, Leah Moebius, hereby certify that true and correct copies of the Comments of the Ad Hoc Telecommunications Users Committee in the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services in CC Docket No. 95-20 were served this 7th day of April, 1995 via hand delivery upon:

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